

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BILLY BRANTLEY, et al.	:	Case No.	C-1-01-378
	:		
Plaintiffs,	:	Judge Susan J. Dlott	
	:		
vs.	:		
	:		
CINERGY CORP.	:	DEFENDANT, CINERGY CORP.'S	
	:	MOTION FOR PROTECTIVE	
Defendant.	:	<u>ORDER</u>	
	:	(AFFIDAVIT OF JILL T. O'SHEA,	
	:	ESQ., ATTACHED HERETO)	

Comes now Defendant, Cinergy Corp., pursuant to Federal Rules of Civil Procedure Rule 26(c) and (d), and respectfully moves this Court for a Protective Order as to documents, files or information, including, but not limited to, personnel files of defendant (other than plaintiffs) or other personnel information concerning employees or other Confidential Matter deemed proprietary or privileged by Defendant and filed in conjunction with the various Motions for Summary Judgment and associated pleadings including, but not limited to, attachments to Affidavits filed in the above-captioned matter per the Court's Calendar Order deadlines pending resolution of the parties' dispute as to a Stipulated Protective Order and for good cause shown. This Motion is supported by the attached Memorandum, the Affidavit of Jill T. O'Shea, Esq. attached hereto and Federal law.

Respectfully submitted,

/s/ Jill T. O'Shea

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MEMORANDUM IN SUPPORT

I. PROCEDURAL POSTURE

On or about September 30, 2002, correspondence was hand delivered and sent via facsimile and ordinary mail to Plaintiffs' attorneys regarding a proposed Stipulated Protective Order and Affidavit to be filed with the court in the above-captioned matter. (See ¶3 Affidavit of Jill T. O'Shea, Esq.; Exhibit "A").

On or about October 3, 2002, correspondence was hand delivered sent via facsimile and ordinary mail to plaintiffs' counsel requesting a response to the September 30, 2002 letter. (See ¶4 Affidavit of Jill T. O'Shea, Esq.; Exhibit "B").

That on or about October 7, 2002, defendant received a response from Paul H. Tobias, Esq. in response to the October 3, 2002 correspondence and states "we would like to resolve the issue" . (See ¶5 Affidavit of Jill T. O'Shea, Esq.; Exhibit "C").

On or about October 9, 2002, correspondence was sent via facsimile and ordinary mail to plaintiffs' counsel requesting either an approval of the "proposed order or submitting a proposed alternative". (See ¶6 of Affidavit of Jill T. O'Shea, Esq.; Exhibit "D").

On or about October 23, 2002, correspondence was received from plaintiffs' counsel stating that "We deem the proposed Protective Order far too broad" and did not submit a proposed alternative. (See ¶7 of Affidavit of Jill T. O'Shea, Esq.; Exhibit "E").

On or about October 24, 2002, correspondence was sent vial facsimile and ordinary mail to plaintiffs' counsel and included a revised Stipulated Protective Order. (See ¶8 of Affidavit of Jill T. O'Shea, Esq.; Exhibit "F").

On or about March 27, 2003, correspondence was forwarded to plaintiff's counsel enclosing Defendant, Cinergy Corp.'s, Responses to Plaintiffs, Billy Brantley, et al., First Set of Interrogatories and Defendant, Cinergy Corp.'s, Responses to Plaintiffs, Billy Brantley, et al., First Set of Request for Production of Documents. Said correspondence further stated "We have reviewed your handwritten revisions to the Stipulated Protective Order in the context of the Brantley, Reed and Smith suits. In light of the separate and distinct nature of the claims between the suits as evidenced in our Memorandum In

Opposition to Motion to Consolidate and various Motions to Sever, we are not willing to agree to your proposed language that all confidential matter produced in the Brantley suit shall be subject to use in any of the three lawsuits. It is further our position that “Item II. Use of Documents Filed with Court” and an Affidavit are both necessary and appropriate in an employment suit of this nature. Thus, it appears as if we will need to address same with Judge Dlott.” (See ¶9 of Affidavit of Jill T. O’Shea, Esq.; Exhibit “G”).

Defendant, Cinergy Corp., seeks to preserve the confidentiality of documents, files or information, including, but not limited to, personnel files of defendant (other than plaintiffs) or other personnel information concerning employees or other Confidential Matter deemed proprietary or privileged by Defendant and filed in conjunction with the various Motions for Summary Judgment and associated pleadings including, but not limited to, attachments to Affidavits and avoid any argument of waiver. The parties have still not resolved the Stipulated Protective Order issue in this matter and have exhausted extra-judicial remedies and requires the court’s intervention. (See ¶¶10 – 11 of Affidavit of Jill T. O’Shea, Esq.).

II. ARGUMENT OF LAW

F.R.C.P.(26) provides in pertinent part, as follows:

- (c) **Protective Orders.** Upon motion by a party or person for whom discovery is sought,... according which the action is pending or alternatively, in matters relating to a deposition, the Court in the district where the deposition is to be taken remake in the order which justice requires to protect the party or person from annoyance, embarrassment, impression, an undue burden or expense, including one or more of the following:

(12) That the disclosure of discovery may be held only on specified terms and conditions, including a designation of the time and place.

F.R.C.P.26(d), provides in pertinent part, as follows:

“Unless the Court upon Motion, for the convenience of parties and witnesses and **in the interest of justice**, Orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other parties’ discovery.

Defendant seeks a Protective Order as to documents, files or information, including, but not limited to, personnel files of defendant (other than plaintiffs) or other personnel information concerning employees or other Confidential Matter deemed proprietary or privileged by Defendant and filed in conjunction with the various Motions for Summary Judgment and associated pleadings including, but not limited to, attachments to Affidavits filed in the above-captioned matter per the Court’s Calendar Order deadlines pending resolution of the parties’ dispute as to a Stipulated Protective Order and for good cause shown. Defendant, Cinergy Corp., is filing with the Motions for Summary Judgment in this matter numerous personnel documents pertaining to the plaintiffs as well as various documents that provide information as to non-parties in this matter and in order to avoid any argument of waiver. For good cause shown, Defendant, Cinergy Corp., respectfully requests a Protective Order in the above-captioned matter.

Respectfully submitted,

/s/ Jill T. O’Shea

Jill T. O’Shea (0034692)

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was forwarded via ordinary mail
this 28th day of July, 2004 to:

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